

WINTERSHALL OIL AND GAS CORP.

IBLA 84-790

Decided February 14, 1985

Appeal from a decision of the Utah State Office, Bureau of Land Management, affirming an assessment of liquidated damages against Wintershall Oil and Gas Corporation for undertaking surface disturbing activities without prior approval.

Reversed.

1. Oil and Gas Leases: Civil Assessments and Penalties -- Oil and Gas Leases: Generally

Where an oil and gas operator is assessed a penalty for Failure to obtain approval from the Bureau of Land Management under 43 CFR 3162.3-3 prior to constructing a flowline in connection with an oil and gas well, but the penalty is assessed under a subsection of the regulations which deals with an entirely different regulation, and it appears that there is no assessment prescribed for violation of 43 CFR 3162.3-3, the decision will be reversed.

APPEARANCES: David P. Howell, operations manager, Wintershall Oil and Gas Corporation, for appellant.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

Wintershall Oil and Gas Corporation, formerly Tricentrol Resources, Inc., appeals from a decision of the Utah State Office, Bureau of Land Management (BLM), dated July 2, 1984, which upheld BLM's Moab District Manager's decision assessing the company \$250 in liquidated damages under 43 CFR 3163.3 for an Incidence of Noncompliance (INC). The Notice of INC dated May 30, 1984, was issued because appellant had failed to obtain written approval for placement of a pipeline prior to disturbing the surface, as required by 43 CFR 3162.3-3.

Appellant filed a request for technical and procedural review on June 8, 1984, in accordance with 43 CFR 3165.3. Appellant explained that its staff member David Howell met with Brian Wood of BLM's Monticello Office, concerning the possibility of laying a flowline from the Nancy No. 11-11 well to the Nancy No. 11-22 tank battery. Appellant stated that the proposed route would utilize the existing access road and pipeline rights-of-way, and would not

disturb any new surface area. In so doing, appellant continued, it would utilize existing battery facilities and pipeline tie-ins which would do significantly less disturbance to the surface area than setting a new battery and installing new pipeline tie-ins on the Nancy No. 11-11 itself. Following this meeting, it was appellant's understanding that verbal permission had been granted for the project, provided that it follow the proposed route. Appellant said it attempted to contact Brian Wood by telephone to inform him of the project initiation, but was unable to reach him. Appellant stated that between the time the Sundry Notice requesting approval for the flowline was mailed on May 8, 1984, and the time it was received by BLM on May 10, 1984, work began on the flowline. Appellant now realizes that it was in violation of the regulation by commencing operations prior to receiving written approval, but had done so believing that verbal approval had been granted.

The State Office affirmed the District Manager's decision. On appeal appellant reiterates the same reasons presented in its request to the State Office. Appellant emphasizes that it does not wish to be uncooperative with BLM; that it made a conscientious effort to comply with the regulations; but that it made the mistake of considering the verbal approval a sufficient basis upon which to proceed.

[1] Appellant explains that an onsite meeting with the proper BLM official was held prior to the initiation of any work and that verbal approval for the flowline was obtained at that meeting. In a June 20, 1984, staff report, Brian Wood explained that he did not visit the site of the Nancy No. 11-11 well. He said he never gave approval and only talked in generalities about pipelines. He also commented that appellant is a "very good operator" but that "they were fully informed on how to avoid this mistake [constructing without approval], and the liability inherent in failing to avoid the mistake."

We do not find that appellant installed the flowline in blatant disregard of the regulations. It appears that a simple misunderstanding occurred. Appellant thought it had verbal approval and that such approval was sufficient. We also believe that appellant was careful to use existing access roads and rights-of-way to lay the flowline so as to minimize surface disturbance. No harm occurred. Nonetheless, there was surface disturbance, and prior approval was necessary under 43 CFR 3162.3-3. That regulation provides as follows:

§ 3162.3-3 Other lease operations.

Prior to commencing any operation on the leasehold which will result in additional surface disturbance, other than those authorized under § 3162.3-1 or § 3162.3-2 of this title, the lessee shall submit a proposed plan of operations on Form 9-331 to the authorized officer for approval.

Appellant admits that it began work on the flowline between May 8, 1984, and May 10, 1984. The Sundry Notice was not approved until May 6, 1984. Therefore, appellant did violate this regulation by commencing operations prior to approval of the Sundry Notice, and the authorized officer had the right to identify this act as noncompliance.

The only remaining issue for determination is whether the \$250 assessed by BLM is appropriate.

In its letter notifying appellant of the INC, BLM informed appellant that it was being assessed \$50 in accordance with 43 CFR 3163.3. 43 CFR 3163.3 lists several types of violations and their corresponding assessments in subsections (a) through (j). BLM did not specify a subsection in the INC notice. Having reviewed the various violations with \$250 penalties, we find that subsection (d) best describes appellant's violation.

43 CFR 3163.3(d) states:

(d) For failure to obtain approval of a plan for subsequent well operations before commencing work on a well to redrill, deepen, convert to injection using any well for gas storage or water disposal, or any other operation requiring prior approval under § 3162.3-2 of this title, \$250. [Emphasis added.]

However, the INC cites appellant for violation of section 3162.3-3; not 3162.3-2. No assessment is prescribed by section 3163.3(d) for a violation of section 3162.3-3, nor does any other provision of Subpart 3163 appear to cover such violations. Presumably this was an inadvertent omission when the regulations were promulgated. Nevertheless, we cannot sustain the imposition of a \$250 assessment prescribed for violation of one regulation where the violation charged is under an entirely different regulation for which no assessment is prescribed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is reversed.

Edward W. Stuebing
Administrative Judge

We concur:

Bruce R. Harris
Administrative Judge

R. W. Mullen
Administrative Judge

